HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 51547 of 2025

Gopal Dutta

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kuldeep Kumar
Counsel for Opposite Party(s)	:	G.A., Shiv Kumar Kesari

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard the learned counsel for the applicant, Mr. Shiv Kumar Kesari, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge-sheet dated 10th January, 2023/19th March, 2023, cognizance/summoning order dated 3rd June, 2024 as well as the entire Criminal Case No. 4971 of 2024 (State Vs. Gopal Dutta) arising out of Case Crime No. 243 of 2022, under Sections 420, 406, 504 and 506 I.P.C., Police Station-Badalpur, District-Gautam Budh Nagar, pending in the Court of Additional Chief Judicial Magistrate-I, Gautam Budh Nagar.

3. Learned counsel for the applicant submits that the applicant has been summoned under Sections under Sections 420, 406, 504 and 506 I.P.C. vide order dated 3rd June, 2024. It is further submitted that both Sections 406 and 420 I.P.C. cannot go together in the same breath, in view of the law laid down by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh and Another*****,** reported in *(2024) 10 SCC 690.* It is thus contended that the impugned proceedings are liable to be set aside.

4. Per contra, learned counsel for opposite party no.2 as well as learned A.G.A. have opposed the prayer made in the application; however, they could not dispute the settled proposition of law relied upon by the learned counsel for the applicants.

5. The controversy involved in the present case relates to the co-existence of offences under Sections 406 and 420 I.P.C. on the same set of allegations. The Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh and Another*** **(supra)** has clarified the legal position. The relevant portion of the judgment is reproduced hereinbelow:

"*38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC.*

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention which is the gist of the offence.

42. The ingredients of the offence of cheating and criminal breach of trust are distinct and separate, and the same set of facts ordinarily cannot constitute both the offences simultaneously.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

6. After hearing learned counsel for the parties, perusing the record and considering the law laid down by the Hon'ble Supreme Court, this Court finds that offences under Sections 406 and 420 I.P.C. cannot ordinarily be invoked together on the same set of facts. Therefore, the impugned summoning order dated 7th March, 2024 is not sustainable in law.

7. In view of the aforesaid, cognizance/summoning order dated 3rd June, 2024 passed by the Additional Chief Judicial Magistrate-I, Gautam Budh Nagar in Criminal Case No. 4971 of 2024 (State Vs. Gopal Dutta) arising out of Case Crime No. 243 of 2022, under Sections 420, 406, 504 and 506 I.P.C.,

Police Station-Badalpur, District-Gautam Budh Nagar is hereby set aside.

8. The matter is remitted back to the court concerned to pass a fresh order on the question of summoning, if required, within a period of two months from today, in light of the law laid down by the Hon'ble Supreme Court in ***Delhi Race Club (supra)***.

9. Accordingly, the present application stands partly **allowed.**

October 24, 2026
Sushil/-

(Madan Pal Singh,J.)

Digitally signed by :-
SUSHIL KUMAR SINGH
High Court of Judicature at Allahabad